THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No. 31167 of 1998

This writ petition is filed being aggrieved by the award made in I.D.No. 180/94, dated 11-03-1998 by the Industrial Tribunal-cum-Labour Court, Warangal insofar as it relates to denying back wages and two annual increments with cumulative effect while granting the relief of reinstatement with continuity of service.

It is the case of the petitioner that he was appointed as driver in A.P.State Road Transport Corporation in the month of November, 1976 and was attached to Hanmakonda Bus Depot and has been performing his duties to the utmost satisfaction of his superiors without any remark whatsoever. While so when the petitioner was performing his duties as driver on 15-02-1994, suddenly abdominal pain developed to him and he could not manage to perform his duties. However, after completing the duty on 15-02-1994 he applied for medical leave for two days on 16-2-1994 and 17-2-1994, which was granted by the 2nd respondent herein. Since the abdominal pain persisted the petitioner was hospitalised on 17-2-1994 and therefore his family members sent leave applications in that regard. Finally after recovery from the abdominal pain the petitioner reported to duty. The 2nd respondent instead of allotting him the duties issued charge sheet alleging unauthorized absenteeism. The petitioner submitted a detailed explanation and stated that he was initially granted leave for two days and thereafter in view of serious conditions he had been hospitalized and his family members continuously informed the fact of hospitalization to the 2nd respondent. Inspite of the same the 2nd respondent conducted a detailed enquiry into the matter and on the basis of the report submitted by the enquiry officer the petitioner was removed from service with effect from 24-12-1994. Having no other option the petitioner raised a dispute and filed a petition U/s 2 A (2) of

the Industrial Disputes Act before the Industrial Tribunal-cum-Labour Court, Warangal. The Labour Court after appreciation of both oral and documentary evidence came to the conclusion that though the charges are proved, the punishment of removal from service is not inconsonance with the proved misconduct. Therefore the Labour Court directed the management to reinstate the petitioner into service with continuity of service by awarding the punishment of withholding two annual increments with cumulative effect and denying attendant benefits and back wages. According to the petitioner the Labour Court having held that the punishment of removal from service is disproportionate to the proved misconduct, it ought not to have denied the other benefits, like attendant benefits, back wages and withholding of two annual increments with cumulative effect.

Though no counter affidavit is filed the learned counsel for the respondents strenuously contended that the Labour Court itself has taken a lenient view of the matter and granted the relief as noticed above and therefore no further relief can be granted in view of serious misconduct on the part of the petitioner i.e., unauthorized absence for a period of more than sixty days from 16-2-1994 to 21-4-1994. Therefore he submits that the writ petition is devoid of merit and is liable to be dismissed.

I have given by anxious consideration to the submissions of the learned counsel on either side, perused the award and the other material made available on record. At the outset I am of the opinion that the Labour Court has not committed any error warranting interference of this Court under Article 226 of the Constitution of India. The petitioner absented himself from duties from 18-2-1994 to 21-4-1994 and there was no intimation to the 2nd respondent or got the leave granted. The sick certificate produced by the petitioner was issued by a private doctor and not a competent medical officer as required under law. Therefore the Labour Court rightly found that the charges are proved against the petitioner. However, having regard to the facts and circumstances of the case, found that the punishment of removal is disproportionate to the proved misconduct, and while giving

such a finding has taken a lenient view in the matter and directed reinstatement of the petitioner into service with continuity of service, without back wages and attendant benefits. Further the Labour Court directed to withhold two annual increments with cumulative effect. I am of the opinion that the finding of the Labour Court denying attendant benefits and back wages cannot be interfered with. It is not the case that the petitioner is habitually absented from duty and was punished for any such misconduct earlier. The punishment of withholding of two annual increments with cumulative effect against the petitioner who had put in more than 20 years of service is very harsh and therefore to this extent the award is liable to be set aside. In view of the same the punishment imposed on the petitioner by the Labour Court withholding of two annual increments with cumulative effect is set aside while confirming the rest of the award.

In the result the writ petition is allowed in part. No order as to costs.

17th August, 2005

BJ/

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH: AT HYDERABAD

The Hon'Ble Sri justice C.V. Ramulu

W.P.No. 31167 of 1998

Dated: 17th August, 2005

Between:

R. Badraiah …Petitioenr

And

The Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Warangal&Ors. …Respondents